OFFICE OF THE NEW YORK STATE COMPTROLLER

DIVISION OF LOCAL GOVERNMENT
& SCHOOL ACCOUNTABILITY

Rockland County

Financial Condition

Report of Examination

Period Covered:

January 1, 2010 — January 19, 2011

2011M-160

Thomas P. DiNapoli

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State of New York
Office of the State Comptroller

Division of Local Government
and School Accountability

December 2011

Dear County Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and County Legislature governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of Rockland County, entitled Financial Condition. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

Office of the State Comptroller
Division of Local Government
and School Accountability

EXECUTIVE SUMMARY

Rockland County (County) consists of five towns and 19 incorporated villages and has a total population of approximately 312,000. The County Executive is the chief executive officer and the County Legislature (Legislature), comprising 17 elected members, is the legislative, appropriating, and policymaking body for the County. The Commissioner of Finance is the chief fiscal officer, appointed by the County Executive and confirmed by the Legislature, and is responsible for managing the County's daily financial activities. The County provides services to its constituents which include education, public safety, health, transportation, economic opportunity and development, culture and recreation, home and community services, and general support.

The County Executive prepares a budget each year and presents it to the Legislature for review and approval. The Legislature can make changes to the budget, but must return the budget with changes by December 7 or the County Executive's budget is deemed adopted. The County's general fund expenditures for the 2010 fiscal year totaled approximately $449 million, funded primarily from real property taxes, State and Federal aid, and grants.

Scope and Objective

The objective of our audit was to examine the County's financial condition for the period January 1, 2010 to January 19, 2011. For trend analysis purposes we reviewed the results of operations for fiscal years 2006 through 2009. Our audit addressed the following related question:

- Were the County's budgeting practices a cause of the continued deterioration of its financial condition?

Audit Results

The County's financial condition has deteriorated over a period of several years. In addition to external factors – namely, a significant tax write-off that caused a deficit in the general fund balance in recent years – the budgeting practices of County officials have left the County with a general fund deficit of over $50 million, significant debt, and no comprehensive plan to ensure sufficient recurring revenues to finance recurring expenditures.

These combined conditions have depleted the general fund's total year-end fund balance which, including $48 million set aside in eight reserve funds, decreased from $23.3 million at December 31, 2008 to a deficit of $3.9 million for 2010. Due to the $52 million deficit in the unappropriated

fund balance for 2010, the County's reserves are in effect meaningless because there are no resources available to fund them.

The County was also adversely affected by delayed State aid payments, averaging more than $38 million in each of the fiscal years 2006 through 2010. Because these payments were not received within 60 days following the fiscal year end, the County could not use those moneys for the budgeted years and had to issue short-term debt to meet its commitments. County debt issuances totaled $343 million in 2007[1] and $100 million or more in each year from 2008 to 2011.

To prevent further decline of the County's finances, the County Legislature adopted a resolution in March 2011, requesting the State Legislature to establish a public benefit corporation (PBC) with the intent of selling the County's nursing home and medical facility, presently operated under the home and infirmary fund, to the PBC and using future debt proceeds[2] to offset the general fund's unappropriated fund balance deficit. However, such a plan requires approval from the State Legislature, which the County has not secured as of August 2011. County officials prematurely budgeted an estimated $17.8 million in one-time revenue from this spin-off, creating an imbalance in the 2011 budget, and had to issue a deficiency note in that amount to balance the budget. The taxpayers are liable for this note in the 2012 fiscal year.

Comments of Local Officials

The results of our audit and recommendations have been discussed with County officials and their comments, which appear in Appendix A, have been considered in preparing this report. Appendix A includes response letters from the County Executive and the County Legislature. The County Executive generally agreed with our recommendations. The County Legislature generally disagreed with our recommendations. Appendix B contains our comments addressing issues raised in the County officials' responses.

[1] This debt included financing for a major certiorari case.

[2] A public benefit corporation is allowed to issue debt beyond the debt limit amount set for the beneficiary local government.

Introduction

Background

Rockland County (County) consists of five towns and 19 incorporated villages and has a total population of approximately 312,000. The County Executive is the chief executive officer. The County Legislature (Legislature) is the legislative, appropriating, and policymaking body for the County and comprises 17 elected members. The Commissioner of Finance is the chief fiscal officer, appointed by the County Executive and confirmed by the Legislature, and is responsible for managing the County's daily financial activities. The County provides services to constituents which include education, public safety, health, transportation, economic opportunity and development, culture and recreation, home and community services, and general support.

The County's budget process starts in May each year with a proposed budget presented to the Legislature by October 23. After the Legislature reviews the budget and holds a public hearing, it must adopt the budget or make changes by December 7 or the budget is deemed adopted. The County's general fund expenditures for the 2010 fiscal year totaled approximately $449 million, funded primarily from real property taxes, State and Federal aid, and grants.

Objective

The objective of our audit was to examine the County's financial condition. Our audit addressed the following related question:

- Were the County's budgeting practices a cause of the continued deterioration of its financial condition?

Scope and Methodology

We examined the County's financial condition for the period January 1, 2010 to January 19, 2011. To perform a trend analysis and determine the basis for the County's financial condition, we also reviewed results of operations for fiscal years 2006 through 2009.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report.

Comments of Local Officials and Corrective Action

The results of our audit and recommendations have been discussed with County officials and their comments, which appear in Appendix A, have been considered in preparing this report. Appendix A includes response letters from the County Executive and the County Legislature. The County Executive generally agreed with our recommendations. The County Legislature generally disagreed

with our recommendations. Appendix B contains our comments addressing issues raised in the County officials' responses.

The Legislature and the County Executive have the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Legislature to make this plan available for public review in the Clerk of the Legislature's office.

Financial Condition

The County's fund balance – the difference between revenues and expenditures that accumulates over the years – is key to financing its operations and providing sufficient cash flow. Reserved fund balance represents moneys that the County has set aside and may use only for specific purposes. A portion of the unreserved, or uncommitted, funds is often used to help finance the ensuing fiscal year's budget and is referred to as appropriated fund balance. The remaining unreserved, unappropriated fund balance is used for cash flow purposes and as a hedge against unanticipated expenditures and/or revenue shortfalls. A continuous decline in the unappropriated fund balance indicates a deteriorating financial condition. The resulting cash flow stresses may require the County to take various measures such as liquidating assets, reducing services, raising taxes, or issuing debt.

Based on its financial statements, the County had an unappropriated general fund balance[3] deficit of approximately $39 million at December 31, 2009 which increased to about $52 million at December 31, 2010. The contributing factors included operating deficits in various component units of the general fund, particularly the home and infirmary fund, necessitating cash advances that were not repaid; the write-off of unpaid real property taxes and penalties owed by a major taxpayer; and questionable budgeting practices, including the overestimation of sales and mortgage tax revenues during prior years of national economic decline.

The County was also adversely affected by delayed State aid payments, averaging more than $38 million in each of the fiscal years 2006 through 2010. Because these payments were not received until after 60 days following the County's fiscal year end, the County could not use those moneys for the budgeted years and had to issue short-term debt to meet its commitments. County debt issuances totaled $343 million in 2007 and $100 million or more in each year from 2008 to 2011.

The County also prematurely budgeted $17.8 million in revenues for 2011 from the planned sale of its nursing home and medical facility, operated under the home and infirmary fund, to a public benefit corporation (PBC) to be established with State approval. However, as of August 2011, the State Legislature had not granted the requested approval for establishing a PBC, and the County had to issue a $17.8

[3] The unappropriated fund balance is the amount of money available at year end before County officials appropriate any portion of the fund balance for the next year's budget.

million deficiency note for which the taxpayers are liable in the following fiscal year.

Unappropriated General Fund Balance

The unappropriated fund balance deficit of the County's general fund was $52 million at December 31, 2010. This deficit has grown by 1700 percent from 2006.

Table 1: General Fund – Operating Results and Fund Balance

	2006	2007	2008	2009	2010
Beginning Fund Balance	$57,681,351	$30,009,197	$20,940,215	$23,258,063	$12,274,248
Revenues	$411,344,117	$421,547,769	$445,113,945	$453,075,217	$454,315,263
Expenditures	$405,389,960	$432,612,460	$447,504,982	$442,681,435	$449,622,829
Operating Surplus/(Deficit)	**$5,954,157**	**($11,064,691)**	**($2,391,037)**	**$10,393,782**	**$4,692,434**
Interfund Transactions	($13,485,408)	($7,606,278)	$4,708,885	($21,377,597)	($16,847,906)
Year-End Total Fund Balance	$30,009,197[a]	$20,940,215[b]	$23,258,063	$12,274,248	($3,954,792)
Less: Reserved Fund Balance	$53,082,159	$44,873,252	$54,784,809	$51,006,383	$48,086,001
Less: Appropriated Fund Balance	$0	$0	$0	$0	$0
Unappropriated Fund Balance	**($2,932,059)**	**($33,535,024)**	**($31,526,746)**	**($38,732,135)**	**($52,040,793)**

[a] Fund balance was restated from $50,150,100 to include a prior-period adjustment of ($20,140,903)
[b] Fund balance was restated from $11,338,228 to include a prior-period adjustment of $9,601,987

The growth in the fund balance deficit was primarily due to three factors:

- Advances from the general fund, which have not been repaid, to various other funds – primarily the home and infirmary fund – that incurred operating deficits
- A significant prior-period adjustment related to a tax certiorari[4] settlement that required a write-off of $20.1 million in penalties due from a major taxpayer
- Historically overestimated revenues, which contributed to the general fund's operating deficits in 2007 and 2008.

Advances to Other Funds – The general fund provided advances to various County funds with deficits. These advances, which have not been repaid, increased the unappropriated general fund deficit as shown in Table 2.

[4] That is, when taxpayers who have been denied a reduction in property tax assessment challenge the assessment on the grounds of excessiveness, inequality, illegality, or misclassification

Table 2: General Fund – (Advances to) Other Funds					
	FY 2006	**FY 2007**	**FY 2008**	**FY 2009**	**FY 2010**
To Home and Infirmary Fund	($12,699,183)	($11,835,883)	($3,061,408)	($8,776,018)	($19,439,807)
To General Services Fund	($4,959,738)	($ 2,806,868)	($1,484,043)	$0	$0
To Tax Certiorari Fund	$0	($24,000,000)	$0	$0	$0
To Country Road Fund	($1,118,710)	$0	$0	$0	$0
To Road Machinery Fund	$0	($24,333)	$0	$0	$0
Total Advances	**($18,777,631)**	**($38,667,084)**	**($4,545,451)**	**($8,776,018)**	**($19,439,807)**

The significant transfer to the tax certiorari reserve in 2007 was due to a court ruling that the County and respective localities were required to refund real property taxes that these governments had collected from a major taxpayer. In addition, as part of the court settlement, the County was required to write off penalties on unpaid taxes totaling $20.1 million and unpaid taxes of $3 million that this taxpayer incurred between 2003 and 2007.

Additionally, the home and infirmary fund consistently incurred operating deficits that historically accounted for the largest advances to any one fund. The County also routinely over-budgeted revenues from sales and mortgage taxes while raising expenditures, incurring general fund deficits and depleting available fund balance to the point that established reserves cannot be used for their intended purpose.

Home and Infirmary Fund – The home and infirmary fund supports the operation of the County's nursing home and related medical facility, under the titles of Summit Park Hospital and Nursing Care Center, which charge for services provided to the public. These combined facilities have 793 employees. Although this fund is intended to be self-sustaining, it experienced operating deficits for 2006 through 2010 because actual revenues were substantially below the level required to finance expenditures.

Table 3: Home and Infirmary Fund – Operating Results					
	2006	**2007**	**2008**	**2009**	**2010**
Revenues	$79,335,999	$78,790,038	$106,029,852[a]	$89,041,990	$87,266,807
Expenditures	$99,664,790	$113,781,408	$114,908,730	$108,688,736	$112,508,853
Operating (Deficit)	($20,328,791)	($34,991,370)	($8,878,878)	($19,646,746)	($25,242,046)

[a] In 2008 the home and infirmary fund received a subsidy from the State of approximately $19 million. No similar subsidies were received in 2009 and 2010.

The results of operations for 2010 showed that the home and infirmary fund had an operating deficit of $25.2 million, increasing the unrestricted deficit to $86.7 million at December 31, 2010. To assist the home and infirmary fund, the County provided administrative services for which the unpaid balance, at December 31, 2010, was $36.4 million. The $19.4 million in advances that the County provided, accumulated from 2006 to 2010, to help offset this fund's deficits also have not been repaid as of August 2011.

County officials told us that, since April 2009, Medicaid reimbursement rates for eligible services provided by the home and infirmary fund have not increased. While they anticipate a retroactive adjustment of $1.6 million in additional revenues for the period April 1, 2009 through December 31, 2010 (based on a State review of rates), the costs of operating the nursing home and medical facility increased by nearly $4 million from 2009 to 2010, and revenue has not kept pace with expenditures. While State subsidies for operating the nursing home were received in 2008, the subsequent subsidy for the 2009 fiscal year, of $11.6 million, was not received until August 2011. Without new revenue streams, the increasing inability of the home and infirmary fund to satisfy its obligations are a growing drain on the County's financial condition.

Estimated Sales and Mortgage Tax Revenues – We found that County officials over-budgeted revenues from sales and mortgage taxes. In years when the national economy showed negative growth, County officials estimated that sales and mortgage taxes (which represent 39 percent of the County's revenue) would increase by 4 to 6 percent. While the County's overall expenditures increased by 7 percent in 2007, revenue from sales and mortgage taxes increased by only 3 percent. The County's sales and mortgage taxes continued to fall short of estimates by 13 percent in 2009, and results of operations for 2010 showed that this revenue source fell short by approximately 6 percent.

Table 4: Sales and Mortgage Tax

Fiscal Year	Budgeted	Actual	Shortfall
2006	$172,420,000	$160,802,525	($11,617,479)
2007	$178,700,000	$171,761,695	($6,938,305)
2008	$190,745,000	$173,963,636	($16,781,364)
2009	$192,360,000	$166,731,320	($25,628,680)
2010	$183,850,000	$173,232,759	($10,617,241)

Although the general fund recovered from this operating deficit in the last two years – due primarily to Federal aid revenues substantially

exceeding budget[5] – the County cannot rely on unplanned revenue sources to compensate for ongoing budget shortfalls.

Fund Balance and Reserves – The general fund's total year-end fund balance, including $48 million in reserves (Table 5), decreased from $23.3 million at December 31, 2008 to $12.2 million at December 31, 2009. Further, the results of operations for 2010 showed additional depletion, reducing the total fund balance to ($3,954,792). Due to the $52 million deficit in the unappropriated fund balance (that is, moneys remaining after reserves are accounted for), the County's reserves are in effect meaningless because there are no resources to fund them.

Table 5: General Fund Reserves (FY 2010)	
Encumbrances	($1,469,583)
Prepaid expenditures	($4,022,306)
Law enforcement	($14,130,777)
Stop DWI Program	($1,210,768)
Handicapped parking	($56,965)
Long-term receivables	($7,755,795)
Advances to other funds	($19,439,807)
Total	**($48,086,001)**
Total Fund Balance	($3,954,792)
Deficiency	**($52,040,793)**

Unless County officials take immediate steps to reverse the declining fund balance, the County is in danger of not being able to meet its obligations and provide services at the expected levels.

New York State Aid and Short-Term Debt

According to modified accrual basis of accounting, revenue that is measurable and available within 60 days following the end of the current fiscal year to finance County activities can be included in the financial records for that year. State aid that is received after 60 days following the end of the fiscal year will not be available to finance the County's activities for the current fiscal year. Several County departments, such as Health, Social Services, and Transportation, rely on aid from the State to finance various services. Previously, some of this aid was provided through advances for social programs, and some as reimbursement of expenditures. Payments made in advance removed the burden from the County of financing social services from other sources of cash.

[5] In the 2009 fiscal year, Federal aid exceeded the County's budgeted amounts by $22.1 million and miscellaneous revenue exceeded the budget by $8.1 million. In 2010, Federal aid exceeded the budget by $16.9 million.

County officials budgeted $95.1 million of State aid in the 2010 general fund budget; however, more than 60 days after the end of the 2010 fiscal year, the County had not yet received $19.6 million of this amount. Although the State has substantially paid the promised aid in four of the five years in our review, it has not effectively reduced the amounts due to the County in the form of State aid receivable (Table 6).

Table 6: State Aid

Fiscal Year	Original Budget State Aid	State Aid Receivable (More Than 60 Days Past FYE)	Actual Aid Eventually Received
2006	$84,530,434	$41,454,942	$85,691,518
2007	$88,188,650	$32,772,241	$89,967,943
2008	$89,171,822	$39,336,739	$98,088,322
2009	$97,593,039	$39,520,479	$91,656,252
2010	$95,126,345	$38,615,745	$75,536,243

As of April 28, 2011, the County Department of Health had 109 unpaid claims, totaling $11.1 million, that were submitted between May 17, 2010 and April 26, 2011 to the State for aid. Of this total, $8.3 million has been unpaid for 90 days or more, and 29 of these claims, totaling more than $4 million, have been outstanding for 150 days or more. Similarly, the Department of Social Services had outstanding claims totaling $14.8 million of which $7.4 million has been unpaid for more than 90 days.

As a result, County officials had to issue short-term debt to meet the County's commitments, creating additional expenses to the County and its taxpayers. County-issued debt amounted to $343 million in 2007[6] and $100 million or more in each year from 2008 to 2011.

Public Benefit Corporation

In addition to the routine overestimation of revenues, County officials made budgeting decisions that adversely affected the County's finances. The premature budgeting of $17.8 million in revenue from the planned spin-off of a nursing home and medical facility, without necessary State Legislative action, resulted in the need for the County to borrow funds in 2011 to address a budget shortfall.

A public benefit corporation, or PBC, is a corporation established by special State Legislation to provide service to the residents of the State, specifically to those within the region in which the PBC was established. An independent board of directors, which the beneficiary municipality appoints, manages the daily affairs of the PBC. The PBC can issue debt greater than the debt limit set for the beneficiary local government.

[6] This debt included funding for a certiorari case.

As of December 31, 2010, the County's home and infirmary fund had incurred $13.9 million in debt. In December 2010 the County Legislature adopted a 2011 budget that included estimated revenue of $17.8 million expected from future proceeds of the sale of the medical facilities to a PBC. In March 2011, the County adopted a resolution requesting the State Legislature to establish a PBC on behalf of the County to sell these facilities. However, as of August 2011, the State Legislature has not passed the special legislation to establish the PBC. County officials did not provide us with any feasibility study, financial analysis, or detailed financial plan, and did not have a contingency plan in the likely event that the sale to a PBC does not materialize. Further, County officials had not made any effort to obtain a valuation of the facilities or otherwise determine their market value; therefore, even if the sale to a PBC takes place, they cannot be assured that these facilities have sufficient value to finance outstanding obligations and the additional debt that a PBC will incur to purchase the facilities from the County.

In March 2011 the County Legislature approved a resolution allowing the County to issue deficiency notes[7] in the amount of $17.8 million to offset this deficit which was created because the sale of the nursing home will likely not be completed in time.

Three other counties in the State – Erie, Nassau, and Westchester – have established PBCs to spin off medical facilities. In each case the counties' taxpayers had to guarantee substantial long-term debt that the PBCs incurred. Erie County, like Rockland County, intended to use part of the debt proceeds to offset its general fund's unappropriated fund balance deficit of $85 million. However, the PBC incurred $214 million in debt, which the taxpayers guaranteed for 30 years. Nassau and Westchester County taxpayers also had to guarantee similar long-term debt in excess of $200 million each. In light of these results, we question the feasibility of the PBC as a mechanism to produce one-time revenue while County officials continue to overestimate recurring revenues without reducing expenditures.

The failure of the County's nursing home and medical facility to be financially viable – particularly because of increasing employee benefit costs, a reduced revenue stream, and the lack of long-term financial planning – has been a primary cause of the County's deteriorated financial condition. In combination with other factors that have reduced the County's available resources, this situation

[7] Section 29.20 of the Laws of the State of New York allow any municipality to issue deficiency notes during any fiscal year to finance a budget deficiency caused by estimated revenues not being realized. The notes are limited to 5 percent of the total budget and are redeemable out of taxes in the year following the issuance.

has placed the County in fiscal stress, caused it to incur debt, and cost the taxpayers money. Unless County officials take immediate action to address these financial issues through better budgeting and operational practices, the County will be at risk of not meeting its obligations or providing an acceptable level of services to its constituents.

Recommendations

1. County officials should evaluate the operations of the County's key operating funds and develop a comprehensive plan to address the operating deficits.

2. County officials should ensure that advances from the general fund are repaid in a timely manner.

3. The Legislature and County officials should realistically budget for sales and mortgage tax revenues and/or reduce general fund expenditures to levels that can be financed by recurring revenue sources.

4. County officials should include in the budget only the revenue from State aid that will be available within the fiscal year or within 60 days after the fiscal year end.

5. County officials should obtain a valuation of the facilities and operations of the home and infirmary fund and develop a realistic financial plan to either divest the facilities or make them financially viable.

APPENDIX A

RESPONSES FROM LOCAL OFFICIALS

The local officials' responses to this audit can be found on the following pages.

COUNTY OF ROCKLAND
OFFICE OF THE COUNTY EXECUTIVE
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C. SCOTT VANDERHOEF
County Executive

November 7, 2011

Mr. Christopher J. Ellis
Chief Examiner
Office of The State Comptroller
Newburgh Regional Office
33 Airport Center Drive, Suite 103
New Windsor, NY 12553

Dear Mr. Ellis:

Thank you for your diligent and thorough audit of the County of Rockland financial conditions for the period January 1, 2010 to January 19, 2011. Your audit presented a fair representation of the contributing factors that resulted in the county's current financial condition. We also agree with your conclusion that our deficit fund balance is the direct result of four major areas: the nursing home and infirmary's growing drain on the county's finances; the write-off of the tax certiorari for Mirant; the continual delays in state aid payments; and the loss of much of our cyclical and economically-sensitive revenues (sales and mortgage recording taxes).

The Proposed 2012 County Budget includes layoffs, major cuts in spending, and the defunding of the County nursing home. The budget can be viewed at www.rocklandgov.com. As you recommended in your report, we have obtained a consulting group, which is currently looking at the valuation of the Summit Park Facility. The consulting group is also developing a plan to either divest or determine any financially viable alternatives. In addition, the estimated income for sales tax revenues for 2012 is equal to the amount budgeted in 2011, which is on target for the year. We will also continue to work with New York State and the federal government on the receipt of timely payments for programs provided on their behalf.

Only one inaccuracy was noticed in your report. On page 10, Table 2: General Fund - (Advances to) Other Funds, the $19,439,807 for 2010 is a cumulative amount recorded on our balance sheet on December 31, 2010 as Home and Infirmary Fund - Deficit and should not be added to the prior years. Therefore, our total liability for the year ended December 31, 2010 is $19,439,807. All other figures appear to be correctly stated.

See Note 1 Page 27

Following your office's recommendation that the County Executive and the County Legislature respond jointly to your report, we invited the County Legislature to work with us in the preparation of this response. However, the Legislature instead chose to prepare a separate response to the audit.

My office will be using your report to address the County's current financial condition, while providing needed services to our residents. Once again, thank you for your recommendations on improving county government.

Sincerely,

C. Scott Vanderhoef
County Executive

The Legislature of Rockland County

HARRIET D. CORNELL
Chairwoman

November 4, 2011

Christopher J. Ellis, Chief Examiner
Office of the State Comptroller
Newburgh Regional Office
33 Airport Center Drive, Suite 103
New Windsor, NY 12553

Rockland County Financial Condition: Report of Examination

Dear Mr. Ellis:

As Chairwoman of the Rockland County Legislature, Chair of the Budget and Finance Committee and Vice Chairman we are writing this letter in response to your recent draft audit.

After a thorough review of the draft audit prepared by your staff and a subsequent meeting with you, [redacted] and [redacted] of your offices, we wish to submit the following comments, recommendations and responses on behalf of the Legislature of Rockland County. For the purposes of clarity, the statements in italics are taken directly from the audit report.

Under the Rockland County Charter, Article 3 Section C2.01. County Legislature; powers and duties, the County Legislature is the body with the power to: (b) make appropriations, levy taxes, incur indebtedness and adopt the budget.

Furthermore, under the Rockland County Charter, Section 4.10, Budget modification after adoption:

1. The County Executive may, during any fiscal year, transfer part or all of any unit of appropriation **within any department, office or unit to another unit of appropriation within such department**, office or unit. Written notice thereof shall be given to the Legislature**. (Emphasis added)**

2. The Legislature may, during any fiscal year, transfer part or all of any unit of **appropriation from one department, office or unit to another, or transfer part or all of any unit of appropriation for the purpose of establishing or**

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> **adding to a new unit of appropriation, or change the terms and conditions of the budget**. Any such action taken by the Legislature shall be **by resolution** subject to the provisions of § C2.02 of this Charter. **(Emphasis added)**

These sections of the Rockland County Charter provide that under (1) the County Executive may transfer funds within a department or unit of government from one line to another, as long as such transfer is within the department or unit of government. Under (2) it is only the Legislature, by resolution, who has the authority to transfer part or all of any amount of appropriation from any source or one department or office unit to another unit or change the terms and conditions of the Budget. We further believe that before such a transfer of funds from any source, other than within a department, could be made, legislative action was required.

We further call your attention to County Law Section 362 (3)

> No fund or appropriation account shall be overdrawn at any time; nor shall one fund or appropriation account be drawn upon to pay any claim chargeable to another.

and

We further call your attention to County Law Section 362 (4)

> Whenever during a fiscal year it shall appear probable to the budget officer that the moneys available for such year will be insufficient to meet the amounts appropriated, he shall forthwith notify the board of supervisors (now legislature) of this fact, stating the probable amount of such deficiency in funds. **(Emphasis added)**

With reference to the County Executive's powers and duties, we further call your attention to Rockland County Charter Article III; Section C3.02 Powers and duties:

> § C3.02. Powers and duties.
> It shall be the duty of the County Executive, subject to the provisions of this law, to **supervise, direct and control the administration of all departments of the county government**.... **(Emphasis added)**
>
> In addition to any other powers and duties otherwise provided, the County Executive shall:
> a. **Supervise and direct** the internal organization and reorganization of each department or other administrative unit, the head of which he has power to appoint. **(Emphasis added)**
> b. **Be the chief budget officer of the county** and present to the County Legislature the annual budget as provided by law and, at the close of each fiscal year or as soon thereafter as practicable, a report of the financial and other transactions of the county, including the reports of the several departments of the county government. **(Emphasis added)**

We further call your attention to Rockland County Charter Article XVII Section C17.02 Department of Finance; Commissioner of Finance:

> § C17.02. Commissioner of Finance; powers and duties.
> Except as otherwise provided by this Charter, the Commissioner of Finance shall have and exercise all the powers vested in and perform all of the fiscal duties of the chief fiscal officer of the county. The Commissioner of Finance shall:
> a. Perform all duties, including, but not limited to, the collection of taxes, accounting, and any other duties required by law, to be performed by a County Treasurer.
> ...
> c. **Audit and certify for payment all lawful claims or charges against funds for which the county is responsible. (Emphasis added)**

When a budget is adopted and money is appropriated by the legislative branch of government, it is the responsibility of the executive branch to run county government, within the amounts and limits of the appropriations. As set forth above, Rockland County Charter Section 4.10 authorizes the County Executive to transfer money from one budget line to another budget line within a department or unit of government. Any other transfer of funds or change to the terms or conditions of the budget must be approved by the Legislature of Rockland County.

What has occurred within Rockland County is that the administration has spent funds in excess of appropriations made by the Legislature within the departments or units of government and has taken money for excess expenditures from other existing funds, without knowledge or approval of the Legislature, and without an appropriation therefore..

See Note 2 Page 27

As a result, when the Legislature is informed of such excess expenditures, and transfers of funds, usually from the audits performed by outside auditors, millions of dollars have been spent in excess of the amounts authorized by the appropriating body of government (Legislature) and the money transferred from other departments or appropriations or from reserve or surplus accounts, has been accomplished and spent without the prior appropriation, knowledge or approval of the Legislature.

We are disappointed that the State Comptroller did not address the breakdown in the process and failure by the County Administration to comply with the County Charter other than to conclude that:

> *Due to the $52 million deficit in the unappropriated fund balance for 2010, the County's reserves are in effect meaningless because there are no resources available to fund them. p.4*

We are disappointed that the State Comptroller looks only at the conclusion and not fully or completely at the process that has resulted in the deficit.

See Note 3 Page 27

If the funds are not sufficient within such an existing department or unit of government then the Commissioner of Finance cannot authorize payment of bills or charges against the funds within

that department, because the Commissioner of Finance cannot "Audit and certify for payment all lawful claims or charges against funds for which the county is responsible". Rockland County Charter Article XVII Section 17.02 (c). What we believe has been occurring is that the Administration (Finance with or without the County Executive's approval) unilaterally transfers money into such departments, thereby increasing (altering) the Budget and increasing appropriations in such departments without the approval of the appropriating branch of government's (Legislature's) knowledge, consent or approval. When the Legislature, in adopting the Budget, approves a fixed sum of money to operate a department of county government for a calendar year, that department, under the supervision of the county executive[1] must be operated within the limits of the appropriation and not in excess thereof without the Legislature's approval. If the Administration determines that the department cannot be operated within the limits of the appropriation made by the Legislature, the Administration must come back to the Legislature to request an appropriation of additional funding before expending any amount, which exceeds the budgetary appropriation.

In reality what has occurred is that the Administration has spent money in excess of the amounts appropriated by the County Legislature and in doing so has spent down the county surpluses and reserves.

See Note 3 Page 27

By example, we call your attention to the audit of KPMG of the County Hospital for calendars 2009 and 2010 submitted to the Legislature's Budget & Finance Committee on September 14, 2011, which shows the County Hospital operating at a loss of $25,439,951, including $20,981,830 for post employee benefits for a net loss of $4,458,121 for 2010. This loss is in excess of the Budget and approved appropriations, which was never authorized by the Legislature.

Should the administration wish to borrow money from one fund to pay the expenditures of another fund there is a provision in the State Law for doing so. General Municipal Law Section 9-a. However, such a loan of funds requires a legislative resolution. No such request for a resolution allowing such loan of funds has been submitted by the Administration to the Legislature. It is our belief that the actions engaged in by the Administration bypass and render provisions of General Municipal Law Section 9-a meaningless.

See Note 2 Page 27

The draft audit report states:

> *The County Legislature approved a plan in March 2011 to establish a public benefit corporation with the intent of selling the County's nursing home...*

The County Legislature has not approved any such plan. In fact, the Legislature has not received any plan from the Administration. From the time of the submission of the proposed 2011 Budget by the County Executive on October 25, 2010, the Legislature has repeatedly requested that we be provided with specific details of how the Public Benefit Corporation will operate, what employees would be included; what services are proposed to be transferred; which units or

See Note 4 Page 27

[1] Rockland County Charter Section C3.02. ("It shall be the duty of county executive...to supervise, direct and control the administration of all departments of the county government")

departments of government will be affected; whether land and/or buildings were proposed to be transferred and, if so, their valuation; and the financial impact both immediate and long term that a Public Benefit Corporation would have on the operation of County government.

The proposed 2011 Budget submitted by the County Executive on October 25, 2010, prematurely budgeted an estimated $17.8 million in one-time revenue from this spin-off creating an imbalance in the 2011 budget. This amount was not based on any actual valuation because such was not known. To date (1 year later), the Legislature has not been provided with such details.

The Rockland County Legislature did approve a home rule request to the New York State Legislature, which home rule request would have given the County Legislature the opportunity to go forward with further consideration of a Public Benefit Corporation once the information is provided—and to learn whether a PBC could be the means to save the mission of the nursing home and provide a more cost-effective way of providing services. The New York State Legislature refused to entertain the County's home rule request and we have been advised that the basis for their refusal is because no details have been provided to the New York State Legislature.

See Note 4 Page 27

The draft audit does not define who are the "county officials". We believe that "county officials" should be defined as the County Administration or County Executive, who have duties as defined under the County Charter, set forth above.

The draft audit report further states

> *As a result County Officials had to issue short-term debt to meet the County's commitments creating additional expenses to the County and its taxpayers....$343 million in 2007.....p 13*

It should be noted that the short-term debt issued in 2007 was a result of a unique tax certiorari court case that required that a bond be issued, to pay the resulting settlement.

See Note 5 Page 27

These comments are submitted by the Legislature of Rockland County in response to the recommendations made in the proposed draft audit. The draft audit's recommendations will be in italics and be followed by our comments.

1. *County Officials should evaluate the operations of the County's key operating funds and develop a comprehensive plan to address the operating deficit.*

As set forth above, we believe that "County Officials" should be defined appropriately. Additionally, the County Legislature adopted Local No. 5 of 2011: A local law providing for the submittal to the legislature of Rockland County of an annual multiyear financial plan for the county of Rockland by the County Executive, and known as "the Rockland County Multi-Year Finance Plan law" to allow residents and local government officials to see the impact of fiscal decisions over time. This law also requires that each June, the County Executive will submit a Financial Improvement Plan to report deviations of revenue and expenses projections as well as

assumptions which may have changed since the filing of the prior multi-year plan, and must include recommended steps to ensure a balanced budget.

2. *County Officials should ensure that advances from the general fund are repaid in a timely manner.*

As set forth above in this letter, the County Legislature was not made aware of these transfers of funds until well after they occurred (often the following year from our auditor's reports). It is the Legislature's position that the administration is obligated to seek our approval before such transfers and expenditures are made and did not do so. We believe a more appropriate recommendation should be that the Administration should strictly follow the Charter and Laws of the State of New York, prior to making any transfers or expending funds in excess of the budgetary appropriations.

See Note 2 Page 27

3. *The Legislature and County Officials should realistically budget for sales and mortgage tax revenues and /or reduce general fund expenditures to levels that can be financed by recurring revenues.*

The Legislature has repeatedly increased the amount of Sales Tax Reserves when it adopts the budget. These reserves were specially created to mitigate shortfalls in revenue, but have been used by the Administration to pay for expenses.

See Note 6 Page 27

4. *County officials should include in the budget only the revenue from State aid that will be available within the fiscal year or within 60 days after the fiscal year end*

We agree that the Budget Officer (County Executive) should only include in the budget revenue from state aid that will be available in a fiscal year or within 60 days after the fiscal year ends, when the Budget is submitted to the County Legislature. We further believe that the Budget submitted by the Budget officer (County Executive) should only include revenue that is realistic and reasonably obtainable within the proposed budget year.

5. *County officials should obtain a valuation of the facilities and operations of the home and infirmary fund and develop a realistic financial plan to either divest the facilities or make them financially viable.*

As noted above, the County Legislature has repeatedly asked for a financial plan for the future operation of the County Nursing Home and Hospital. The Administration, as noted in the audit, has never presented any kind of financial plan or outline of operations for its proposed Public Benefit Corporation. It is for this reason that the Legislature has not passed any resolution or legislation approving the sale of the County Nursing Home and Hospital to a Public Benefit Corporation. The Legislature has approved a contract with a consultant firm who are being charged with exploring the feasibility of such a sale, and evaluating the operation of the facilities and the financial inter-relationships of the various units of County government with regard to the potential sale of the nursing home and hospital to a Public Benefit Corporation.

See Note 2 Page 27

Respectfully submitted

Harriet D. Cornell
Chairwoman of the Legislature

Hon. Ilan S. Schoenberger
Chair, Budget & Finance Committee

Alden H. Wolfe
Vice Chairman of the Legislature

ISS/HC: cs

The second rule adopts the updated version of the standards for certain electronic healthcare transactions, under the authority of HIPAA (5010/D.O. final rule), and requires the use of the new transaction standard by January 1, 2012.

While the deadline for compliance may seem a long way off, the transition to ICD-10 is expected to be highly complex and will lead to significant changes in people, processes, and technology. We continue to recommend that the Hospital develop a formal documented plan for the ICD-10 conversion which would be reported on regularly (i.e. quarterly) to the County Legislature.

Hospital Specific Comments

*Financial Position**

For 2010 and 2009, Summit Park has incurred losses of approximately $25.4 million and $19.9 million, respectively. These net deficits include expenditures for postemployment benefits other than pension in the amounts of $20.9 million in 2010 and $18.0 million in 2009, as required by the Governmental Accounting Standards Board. Without consideration of the postemployment benefits adjustment, Summit Park would have reflected net losses of $4.5 million and $1.9 million for 2010 and 2009 respectively.

Summit Park's working capital deficit has increased from $20.8 million at December 31, 2009 to $29.2 million at December 31, 2010, and its unrestricted net deficit has increased from $61.8 million at December 31, 2009 to $86.7 million at December 31, 2010.

In addition, Summit Park continues to rely on advances from the County of Rockland to meet it operating needs. The amounts due to the County of Rockland increased from $19.4 million in 2009 to $36.4 million in 2010. A large part of this increase is due to payments Summit Park is expecting to receive from the State of New York in 2011 relating to intergovernmental transfers.

We continue to recommend that Summit Park continue to explore opportunities to enhance revenue (e.g., increase patient census, etc.) and decrease expenses (e.g., controlling of overtime, etc.) in order to improve financial condition. Summit Park should consider performing a complete operational review of the organization. An operational review would include performing a diagnostic risk assessment as to where the organization is vulnerable to decreased revenue and/or increased costs. In addition, such an organizational review should include the following: (1) a review of the complete revenue cycle (admission to collection) to determine that the process is operating in an effective and efficient manner to optimize third party reimbursement based on the supporting clinical documentation; (2) a review of current staffing ratios to industry benchmarks, including not only full-time equivalent ratios but the appropriate professional skill mix as well; and (3) a review of other expenditures to determine if the organization is maximizing vendor discounts based on current and projected purchasing patterns. In addition, Summit Park should continue to review the current structure of the administrative

SUMMIT PARK HOSPITAL/SUMMIT PARK
NURSING CARE CENTER
(Formerly Known as Summit Park Hospital/
Rockland County Infirmary)
(An Enterprise Fund of the County of Rockland)

Statements of Revenues, Expenses, and Changes in Net Deficit

Years ended December 31, 2010 and 2009

	2010	2009
Operating revenues:		
Net patient service revenue (net of provision for bad debts of $1,454,672, in 2010 and $3,469,257, in 2009)	$ 83,138,572	84,563,408
Other operating revenue:		
Services provided to the County jail	420,500	525,000
Services provided to the County of Rockland	3,074,763	2,909,373
Other	632,972	1,044,209
Total operating revenues	87,266,807	89,041,990
Operating expenses:		
Salaries and wages	47,403,206	48,580,859
Employee benefits	20,086,524	18,567,106
Postemployment benefits, other than pension	20,981,830	18,022,332
Supplies and other	8,402,345	8,007,643
Depreciation	2,358,486	2,210,960
Expenses allocated by the County of Rockland	13,276,462	13,299,836
Total operating expenses	112,508,853	108,688,736
Loss from operations	(25,242,046)	(19,646,746)
Interest expense, net	197,905	250,197
Loss before transfers	(25,439,951)	(19,896,943)
Transfers – County of Rockland	—	—
Decrease in net deficit	(25,439,951)	(19,896,943)
Net deficit at beginning of year	(51,169,969)	(31,273,026)
Net deficit at end of year	$ (76,609,920)	(51,169,969)

See accompanying notes to basic financial statements.

APPENDIX B

OSC'S COMMENTS ON THE COUNTY OFFICIALS' RESPONSES

Note 1

The draft report was amended to correct the amount of advances to $19.4 million, which represents the cumulative advance to the home and infirmary fund at December 31, 2010.

Note 2

The Legislature and County Executive were aware of the County's financial problems, such as advances from the general fund to the home and infirmary fund, and should have addressed the problems jointly or individually because they have shared responsibility for the County's finances.

Note 3

We conducted a five-year (2006 through 2010) analysis of the County's fund balances. Our review did not identify total appropriations being exceeded during the five-year period in the general fund. With the exception of the home and infirmary fund, in all instances expenditures were kept below the final budget. Since overall expenditures did not exceed the total budgeted appropriations, over-expenditure was not the reason for the fund deficit. Instead, for the same period, we found that revenues overstated in the annual budgets. This was one of the causes of the deficits as we reported.

Note 4

The draft report was amended to say the following: "[T]he County Legislature adopted a resolution, in March 2011, requesting the State Legislature to establish a public benefit corporation (PBC). . ."

Note 5

We inserted a footnote in the draft report to clarify this matter (tax certiorari debt issuance).

Note 6

A reserve fund is established to provide resources for a specific intended future use. The "Sales Tax Reserves" referenced are not true reserves. A contingency appropriation amount of $750,000 was included in the County's budget, but the inclusion of this appropriation did not address or resolve the County's overstated revenues and an imbalanced budget, and did not cover the shortfall in the revenue estimates.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

To accomplish the objective of the audit and obtain valid audit evidence, we interviewed appropriate officials and employees, examined pertinent documents, and performed analyses of the County's finances for the period January 1, 2010 to January 19, 2011. To perform trend analyses and determine the basis for financial deterioration we reviewed results of operations for fiscal years 2006 through 2009. Our procedures included the following steps:

- We interviewed County officials such as members of the Legislature, Commissioner of Finance, and other department heads.

- We reviewed legislative minutes and related reports.

- We reviewed financial reports such as independent auditors' reports for 2006 through 2010 and the annual report for 2010. We also reviewed financial records and budget documents.

- We conducted various analyses of the financial records to gain a full understanding of the County's financial condition and to identify trends.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX D

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